



April 5, 2002

Ms. Julie Gannaway  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2002-1683

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161214.

The Bryan Police Department (the "department") received a request for fourteen categories of information regarding a Bryan Police officer. You state that this request was directed to the civil service director and that the city is releasing the responsive information contained in the officer's public personnel file maintained under section 143.089(a) of the Local Government Code. You contend that the information you submitted to this office is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. You contend that the submitted information is made confidential by section 143.089 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two police personnel files. *See* Local Gov't Code § 143.089 (a), (g). The first file, known as the civil service file, is required. *See* Local Gov't Code § 143.089(a). The civil service file must be maintained by the civil service director or the director's designee and must contain all records of an officer's commendations, misconduct that resulted in disciplinary action under

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records at issue as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

chapter 143, and supervisor evaluations.<sup>2</sup> *See id.* Information contained in the civil service file generally must be released, unless it is shown that some provision of chapter 552 of the Government Code permits the information to be withheld from public disclosure. *See id.* § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990). The second personnel file is not required but may be maintained by a police department for its own internal use. *See* Local Gov't Code § 143.089(g). Information contained in the internal file is generally confidential and may not be released to the public. *See id.*; *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (“the legislature intended to deem confidential the information maintained by the . . . department for its own use under subsection (g)”); *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under section 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You inform us that the information at issue here comes from the department’s internal file. Having reviewed the information at issue, we conclude that it is information that may properly be maintained in an internal 143.089(g) file and that it is therefore made confidential by subsection 143.089(g). *See* Local Gov’t Code § 143.089(g); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d at 949 (provisions of section 143.089 reflect “a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual’s written consent”). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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<sup>2</sup> Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 161214

Enc. Submitted documents

c: Mr. Jim James  
Law Office of Jim James  
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(w/o enclosures)